

May 9, 2018

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VIA Hand Delivery, ECFS and Email

Ms. Marlene H. Dortch
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Room TW-A325
Washington, D.C. 20554**Re: *CenturyLink Communications, LLC f/k/a Qwest Communications Company, LLC v. Verizon Services Corp., et al.*, Docket No. 18-33, File No. EB-18-MD-001**

Dear Ms. Dortch:

Pursuant to 47 C.F.R. § 1.727(c) & (f), CenturyLink Communications, LLC (“CenturyLink”) hereby opposes the motion to strike (the “Motion”) filed by defendant Verizon on May 3, 2018, in the above-captioned proceeding.¹ Verizon seeks to strike portions of the Reply Declaration of Robert Montenegro for allegedly “expressly declin[ing]” to produce documents Mr. Montenegro discusses based on his direct personal knowledge of the negotiation history between the parties. Verizon’s Motion is meritless for the numerous reasons discussed below, first and foremost because Mr. Montenegro bases his declaration on his personal contemporaneous knowledge, and because the referenced documents are already in Verizon’s possession. They were previously exchanged between the parties as part of the referenced contract negotiations, and often originated with Verizon itself. Therefore, there is no basis to strike Mr. Montenegro’s discussion of those shared materials based on his direct personal knowledge.²

In addition, CenturyLink’s confidentiality concerns regarding those materials related to a non-disclosure agreement between the parties at the time, which Verizon’s Motion does not mention but appears to view as either irrelevant or superseded by the Protective Order in this proceeding. Verizon also did not bother to confer with CenturyLink on this issue prior to filing its Motion. Accordingly, CenturyLink is prepared to provide those materials as discussed below.

¹ “Verizon” refers to defendants Verizon Services Corp., Verizon Virginia LLC, Verizon Washington, DC, Inc.; Verizon Maryland LLC; Verizon Delaware LLC; Verizon Pennsylvania LLC, Verizon New Jersey Inc.; Verizon New York Inc.; Verizon New England Inc.; Verizon North LLC, and Verizon South Inc. CenturyLink is separately opposing Verizon’s motion for leave to file a sur-reply.

² 47 C.F.R. § 1.720(c) (“Facts must be supported by relevant documentation or affidavit.”) (emphasis added).

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It is important to note that Verizon was the party that first opened the door to this contract negotiation issue in its Answer. In it, Verizon repeatedly relied on the Declaration of Christopher A. Alston to characterize the parties' negotiations, including as the basis for claiming that CenturyLink's position supposedly conflicts with the "core framework the parties used to negotiate the Price Flex Deal."³ Indeed, Mr. Alston opines at length regarding his views of those negotiations and the alleged implications for the resultant contracts, often with no supporting citations or documentation whatsoever.⁴ By its own argument, Verizon should have provided these documents as part of Mr. Alston's declaration when first raising these issues in its Answer. Despite failing to do so, Verizon nonetheless attempts to fault CenturyLink for rebutting Mr. Alston's unsupported interpretations and thinly veiled legal conclusions with Mr. Montenegro's reply declaration, which is based on his contemporaneous personal knowledge of *actual documents exchanged between the parties during those negotiations*.⁵ That is not a valid basis for a motion to strike.⁶

Contrary to Verizon's suggestion, CenturyLink has always been willing to provide these materials. As CenturyLink stated in its Reply, it did not do so at the time out of respect for confidentiality issues, namely a non-disclosure agreement related to those negotiations.⁷ Had Verizon requested these materials directly from CenturyLink, CenturyLink would have provided them immediately. Yet despite a recent telephonic meet and confer between the parties on May 1, 2018, during the interval between the filing of CenturyLink's Reply and the filing of Verizon's present Motion, Verizon did not mention this issue at all. Nonetheless, CenturyLink takes Verizon's current references to the Protective Order in this proceeding as well as Verizon's demand that CenturyLink be ordered to produce the documents "relevant to Mr. Montenegro's

³ See, e.g., Answer, ¶ 4 (citing Mr. Alston for the proposition that CenturyLink's position allegedly conflicts with the "core framework that the parties used to negotiate the Price Flex Deal"); ¶ 52 & n.84 (same, and further characterizing the bulk of Mr. Alston's declaration as "describing negotiating history"); Alston Decl., ¶¶ 2, 8-18.

⁴ See, e.g., Alston Decl. ¶¶ 2, 8-10. This is a common infirmity among Verizon's declarations, which routinely provide no substantive factual basis for their assertions. See, e.g., Declaration of Susan Fox and Marian Howell, at ¶¶ 7-8 (providing no supporting evidence for various factual assertions including that Verizon allegedly provided CenturyLink with "years of notice" regarding FMS conversion dates and that CenturyLink was supposedly "actively involved" in configuring its network under FMS.)

⁵ Motion, at 3 (asserting that Mr. Montenegro should not be allowed to "contradict Verizon's description" of the contract negotiation process). The Commission's February 9, 2018 Letter Order waived 47 C.F.R. § 1.726(a) to "ensure [CenturyLink] is able to properly respond to specific factual allegations ... Verizon may make for the first time in its answer that are not specific to affirmative defenses, resulting in a more complete record and a more efficient proceeding."

⁶ In the event the Commission were to grant Verizon's motion, then CenturyLink requests that for purposes of substantive consistency the Commission also strike all references in the Declaration of Mr. Christopher Alston to the same negotiations and all references in Verizon's Answer to such negotiations.

⁷ See, e.g., Reply Declaration of Robert Montenegro, at ¶ 5 n.3. CenturyLink agrees that the Protective Order in this proceeding should provide ample protection for those materials, but due to the short response period CenturyLink was afforded for its Reply, it did not have time to argue with Verizon about whether Verizon would permit disclosure of those materials under the NDA. Verizon previously opposed CenturyLink's request for an extension of time in which to file its Reply.

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characterizations of the parties' negotiation process" as Verizon's authorization to produce those materials, and accordingly provides them as exhibits.⁸

For these reasons, Verizon's Motion is meritless and should be denied. Furthermore, CenturyLink is providing the attached material, and Verizon's Motion should also be denied as moot.

Respectfully submitted,



Marc S. Martin
Brendon P. Fowler

Counsel for CenturyLink

Enclosures

cc: Curtis L. Groves, Verizon
Joshua D. Branson, Kellogg Hansen P.L.L.C.
Erin Boone, Federal Communications Commission
Anthony DeLaurentis, Federal Communications Commission
Rosemary McEnery, Federal Communications Commission
Sandra Gray-Fields, Federal Communications Commission

⁸ For convenience, CenturyLink has designated these materials as additional numbered exhibits under Section 1.727(f), and redacted recent privileged communications, but maintains that the Commission should deny Verizon's motion in the first instance. By providing these materials, CenturyLink denies and does not concede any of Verizon's allegations in its Motion, including the allegation that Verizon should be allowed to "fully respond" to Mr. Montenegro's descriptions of the contract negotiations. To the contrary, as discussed Verizon already had access to these materials when preparing its Answer, and Verizon was the party that placed these matters at issue in the first instance. It should not be permitted to attempt to cure its own initial failure to adequately support or document its position in its Answer. CenturyLink also denies Verizon's suggestion that its Motion to Strike somehow serves as a permissible document request, or that any such discovery has been approved or commenced. Motion, at 3 n. 12.

PUBLIC VERSION

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
CenturyLink Communications, LLC f/k/a Qwest)	
Communications Company, LLC,)	
)	
Complainant,)	Docket No. 18-33
v.)	File No. EB-18-MD-001
)	
Verizon Services Corp., et al.)	
)	
Defendants.)	
)	

CONFIDENTIAL EXHIBITS 75 - 88

EXHIBITS TO CENTURYLINK COMMUNICATIONS, LLC'S OPPOSITION TO VERIZON'S MOTION TO STRIKE

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- Exh. 78. Email Attachment: CenturyLink Custom Solution Plan Proposal, dated September 25, 2013
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- Exh. 87. Email from C. Alston, Verizon, to A. Grimm and R. Montenegro, CenturyLink, re CenturyLink Custom Solution Plan - Draft Contract Documents, dated November 26, 2013
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